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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/886,074 | 06/18/2001 | Stephen A. Yencho | 032405-053 | 6914 |

33109 7590 03/02/2005

CARDICA, INC.
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EXAMINER

BAXTER, JESSICA R

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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3731

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

7

Office Action Summary

Application No.

09/886,074

Applicant(s)

YENCHO ET AL.

Examiner

Jessica R Baxter

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-42, 60-67 and 70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 60-64 is/are allowed.
- 6) ☒ Claim(s) 36-42, 65-67 and 70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 36-42, 65-67, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,024,748 to Manzo et al. in view of U.S. Patent No. 5,833,698 to Hinchliffe et al.

Manzo discloses an anastomosis device applicator comprising a first tube configured to receive an anastomosis device (FIG. 19 unit 16); a second tube concentric with the first tube (tube 46), the first and second tubes configured for movement with respect to one another (FIG. 19 and 20); and a side hole in at least one of the first and second tubes configured to allow the graft vessel to pass out the side of the tube (FIG. 19 IMA). Manzo discloses the claimed invention except for the anastomosis device being a one-piece device. Hinchliffe teaches that a one-piece device (FIG. 28) may be used as an alternate embodiment for a plurality of individual clips (FIG. 1A). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Manzo, with a one-piece device since a one-piece device is considered to be an equivalent alternate embodiment of an anastomosis device.

Regarding claim 40, Manzo discloses that the first tube is configured for removable connection to the anastomosis device (Column 8 lines 45-57).

Regarding claim 41, Manzo discloses that the anastomosis applicator further comprises a handle connected to the first and second tubes with a mechanism for deploying the anastomosis device (handle 12).

Regarding claims 42 and 67, Manzo discloses that the first tube includes a plurality of connecting members at a distal end and the anastomosis device includes a plurality of features arranged to removably connect to the plurality of connecting members (FIG. 7 indentations for curves of the clips).

Regarding claim 66, Manzo discloses that the step of deploying the anastomosis device is performed by moving the first and second tubes with respect to one another (FIG. 19 and 20).

Response to Arguments

3. Applicant's arguments with respect to claims 65-67 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter
Examiner
Art Unit 3731


jrb


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

2/28/05